

Structured Settlements..... say WHAT?

Prepared by Geraldine R. Straus, LL.B., CSSC, Henderson Structured Settlements, LP

What is a Structured Settlement?

A Structured Settlement may be defined as a means whereby all, or part of the damages from a personal injury claim, are paid to a plaintiff by way of periodic payments in the form of an annuity rather than by way of a lump sum. Structured settlements are an alternative to the conventional lump sum settlement.

Secure, Guaranteed, Tax-Free!

Structured settlements were first introduced to Canada in 1968 by virtue of cross border actions involving the thalidomide cases of the 1960s and the Ford Pinto cases of the 1970's. Structured settlements became more familiar here in Canada in the early 1980's when they were formally accorded tax-free status by the Government of Canada.

In an effort to create an incentive to invest personal injury damages in something guaranteed and geared to the longer term (thereby minimizing the possibility of premature dissipation and reliance, perhaps, on government support) the Government of Canada exempted structured settlement income from taxation, subject to specific conditions (Refer to *Interpretation Bulletin IT-365R2* issued by Revenue Canada [as it then was] – available on our website at www.henderson.ca):

1. The damages must be invested in reference to a **claim for personal injury or death**.
2. The plaintiff and the insurer (generally casualty insurer) **must agree** to settle, in part, by way of a structured settlement.
3. The insurer must **purchase** a single premium annuity contract to produce the periodic payments in accordance with the settlement agreement.
4. The **insurer** must be both the **owner** and annuitant (beneficiary) of the annuity policy.
5. The annuity policy must be **non-assignable, non-transferable and non-commutable**.
6. The insurer must **irrevocably direct that all payments** be made to the measuring life (the plaintiff).
7. The **insurer must remain liable** to make the periodic payments required by the settlement agreement in the event of a life insurer default. (The insurer does have the option to assign their liability to an assignment company, in which case the assignment company must remain liable for the periodic payments in the event of a life insurer default).

Custom Tailor a Payment Plan

We encourage you and your client to meet with a structured settlement consultant as a structured settlement may be put together in any one of a number of ways. A structured settlement consultant will meet with you and your client, at no cost to you or your client and no cost to the insurer; to review the various options and prepare a payment plan that will best suit your client. The variables to be contemplated in the formulation process include (*See the attached Schedule "A" and Schedule "B" for examples of a structured settlement payment plan; lifetime payments and specific term, respectively*):

1. Amount to be invested;
2. Term (i.e. how long the plan is to run – for life or 10 years, or 25 years, to age 60?)
3. Commencement date of payments (i.e. immediate or deferred – if payments are not required immediately, then perhaps defer the payments to a specific age such as age 55 or 60 for the ultimate tax-free guaranteed “pension”.)
4. Frequency of payments (i.e. monthly, annual, etc.)
5. Lump-sum payments (school tuition, special needs equipment, down payment for a home etc.)
6. Level or indexed (example: CPI, 3%, 2%, level) payments; and
7. Guaranteed Period (can include a guarantee to secondary payee/beneficiary)

How Secure is a Structured Settlement?

A structured settlement is one of the most secure investments available. The structured settlement has three significant guarantees.

1. All of the life insurance companies that are competitive in the Canadian structured settlement market are federally registered and meet specific asset requirements including a high insurance rating. The chance of any or all of these life companies defaulting is virtually non-existent.
2. Assuris is, in effect, insurance on life insurance companies failing to meet their responsibilities. If any one of the life insurance companies participating in a structured settlement were to fail, Assuris would make the structured settlement payments up to a specific amount. (See www.assuris.ca for more details).
3. The Insurer (or its assignee) also remains liable for all payments from a structured annuity for so long as the structured annuity is guaranteed to be made.

Assignment of Liability

As mentioned above, the insurer is required to maintain liability for the periodic payments of a structured settlement should the life company fail to pay. A life company has never defaulted on a structure payment. Regardless, it is the policy of some casualty insurers to assign their residual liability to an assignment company. The assignment fee, per policy is \$2,000.00. This fee is often negotiated between the parties, when negotiating a settlement. Once the structured annuity is assigned, the casualty insurer is released of all liability and the assignee remains liable for the remaining payments in the case of a life company default. Assignment has no effect upon the tax-protected status of a structure.

What Type of Claims are Appropriate for Structured Settlements?

Structured settlements can only be used in a tort or accident benefit claim for personal injury or death such as:

1. Damages generally in excess of \$50,000.00. However, in the case of infants, given payments are deferred often for 10 to 15 years or a plaintiff with substance abuse issues, where giving over a lump sum of money may result in early death or early dissipation of the funds, a structure may be most appropriate.
2. Serious Bodily Injury where the greater the future care costs, the greater the benefits of a structure.
3. Future Loss of Income.
4. Fatal Injury, Wrongful Death leading to Dependency Claims
5. Physical or mental abuse.
6. Medical malpractice.
7. Excess Limits.
8. Multiple Parties – Similar to excess limits claims, structured settlements can be used to resolve claims where there are multiple claimants and limited compensatory funds.
9. Punitive Damages.
10. First Party Claims (Accident Benefits) such as future care, income disability, medical, rehabilitation, housekeeping etc.

Due to the security and tax-advantage of a structured settlement, they are particularly suited to plaintiffs that fit the following profiles.

1. **Plaintiffs with Impaired or No Work-Life Expectancy.** These plaintiffs have a low probability of generating income for the remainder of their lives; as such they have little to no ability to recoup financial losses in a financial or housing downturn. They are in less of a position to bear financial risk. Much of personal finance revolves around managing living expenses which are usually paid on a monthly basis. Managing this with a secure income is much easier and requires much less discipline than with an equivalent large lump sum that must be invested and managed with care. It is a common phrase in financial planning that there is “no substitute for income”.
2. **Plaintiffs with Ongoing Medical, Rehabilitation or other Care Costs.** These plaintiffs have ongoing costs that must be paid on a regular basis therefore more vulnerable to financial risks.
3. **Minors and Near-retirement Plaintiffs.** These plaintiffs can benefit from the tax-protection and security a structure provides. For minors, it secures an income (which can be deferred to their age 18 and paid out through the post-secondary education years of schooling) preventing the risk of premature disbursement of the funds. For plaintiffs near retirement, the tax-free income from a structure offers what could be considered the “ultimate RRSP” and can be tailored to enhance their retirement financial plan.

4. **At Risk Plaintiffs.** Plaintiffs with substance abuse issues or transient individuals are especially at risk for the early dissipation of any settlement funds received in a lump sum. Though they may be legally competent, their personal circumstances challenge their ability to manage their finances responsibly and they ultimately may come to depend upon government assistance after receiving a lump sum – gaining little long-term benefit from their personal injury settlement.
5. **The Risk Averse or Financially Unsophisticated.** Some plaintiffs may wish to avoid taking on financial risk as a personal preference. Structured settlements are guaranteed and self-managed therefore precluding the risk of premature dissipation and the need and expense associated with financial management.
6. **Marginal Rate of Income Taxation.** Plaintiffs who are either in a high income tax bracket to begin with, or would be pushed into a higher income tax bracket by the interest earned on the investment of a lump sum, would derive a larger benefit from tax-free structure income.

Structured Settlements from the Plaintiff Perspective:

Why incorporate a Structured Annuity in your Client's Settlement?

1. **SECURITY** – in the form of regular, guaranteed payments, received in the same periodic way that income and expenses are generally received and paid.
2. **TAX FREE** to both the client and his named secondary payee/beneficiary
3. **FLEXIBILITY** – (at inception) in that a structured settlement can be tailored to the anticipated needs and wishes of the plaintiff.
4. **ELIMINATION OF THE RISK OF EARLY DISSIPATION** – thereby eliminating the risk of becoming dependent upon government assistance.
5. **FINANCIAL MANAGEMENT** – without a fee.

Assured Income for the Severely Handicapped - "AISH" BENEFITS

If your client is receiving AISH benefits, or is applying for AISH benefits, it is helpful to know that AISH benefits **are not** affected by payments received from a structured settlement. The test for purposes of AISH entitlement is "income reportable under the Income Tax Act". Payments from a structured settlement are **not** income reportable under the Income Tax Act. Therefore, structure payments are not considered, when determining entitlement to AISH benefits.

Role of the Structured Settlement Broker:

CONSULTANCY SERVICES:

A structured settlement broker/consultant might be called upon at any time during the claim settlement process. Historically, the convention was to call a structured settlement consultant when a claim was settled and some or all of the damages were to be structured. Structured settlement consultants are now more often contacted for pre-settlement evaluative purposes; that is, to evaluate the present value cost of various potential settlement amounts.

The structured settlement consultant's role is non-partisan and is to **assist in both the assessment and investment of damages**. The assumptions underlying the structured annuity cost, and the negotiation over these assumptions is left to the parties involved in negotiation.

A structured settlement consultant can assist throughout the settlement process as follows:

1. Plaintiff counsel contacts a structured settlement consultant and requests illustrations to discuss with their client - providing an idea of what a structured settlement is and what they could produce at various settlement amounts. Plaintiff counsel may invite the structured settlement consultant to meet with her client to introduce the structured settlement concept.
2. Before negotiations either one or both counsel request structured settlement proposals or evaluative reports from a structured settlement consultant to assess the present value figures for various heads of damage.
3. Counsel may request the attendance of the structured settlement consultant at a variety of meetings (e.g. mediations, settlement meetings, pre-trials/trials, individual meeting with clients and their representatives, etc.)
4. When a settlement nears, all parties consent to the use of a structured settlement and with the structured settlement consultant's assistance, the plaintiff selects a final payment plan that is best tailored to the plaintiff's needs and wishes.
5. Funds are then requested from the insurer and forwarded to the structured settlement broker. The structured settlement broker completes final brokerage to ensure and guarantee the best possible returns, given the plan chosen and the funding amount, as of the date of placement of the funds. The structure will then be placed with one or more life insurance companies.
6. The structured settlement consultant/broker, through their in-house legal department will then assist in the drafting and execution of the settlement documents. The structured settlement broker will review all settlement documents and guarantee compliance of the documents with Canada Revenue Agency to ensure the payments are tax-free to the named recipients.
7. Finally, the structured settlement consultant's office will assume an ongoing administrative responsibility to ensure the funds continue to flow as directed to the plaintiff or their named secondary payee for so long as payments are to be made from the structured annuity.

EDUCATIONAL SERVICES:

In addition to the above consultancy role (both pre- and post-settlement), the structured settlement consultant is also available to provide educational services by way of publications, seminars, and meetings intended to encourage familiarity with the concept of structured settlements.

Should you wish someone from our office to attend and give a breakfast, luncheon or evening seminar for example on the concepts of a structured settlement or how to use the structured settlement as a negotiating tool, please contact our office.

All of the services of a Structured Settlement Company are provided at no cost to you, no cost to your client and no cost to the insurer.

IN SUMMARY:

There is much to know about structured settlements. I encourage you to contact me directly, should you wonder if you should consider a structured settlement for a file, or if you would like to meet and discuss the concepts, or if you would like me to attend at your office and meet with several of your colleagues for a seminar to discuss the structured settlement. It is a most helpful tool.

It is also worth noting that there have been successful lawsuits in the United States by former clients who sued their former lawyer for failing to inform them that a structured settlement was available to them at the time of settlement.

You may wish to make it a part of your practice, to advise your client of the risks and benefits of both a lump sum settlement and a structured settlement. You may wish to confirm, in writing from your client, that you have:

- Presented both the lump sum and structured settlement options to your client;
- Presented the pros and cons of a lump sum settlement and a structured settlement;
- Presented the dissipation and investment risks of a lump sum settlement;
- Presented the fact that a settlement decision is irrevocable.

It is then your client's decision what they choose to do, and how they wish to manage the settlement funds.

Prepared by:

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FINAL STRUCTURED SETTLEMENT PAYMENT SCHEDULE
CAPITAL COST - \$ 500,000.00

CLAIMANT: CHARLES BROWN
 BIRTHDATE: DECEMBER 8, 1975

COMMENCING: NOVEMBER 1, 2014
 MONTHLY INCOME: \$1,188.55
 INDEX RATE: 2.0% PER ANNUM - COMPOUNDED
 TERM: FOR LIFETIME
 GUARANTEE TO SECONDARY PAYEE (BENEFICIARY) - 30 YEARS

LIFE COMPANY: BMO LIFE ASSURANCE COMPANY

8/Sep/14

TAX-FREE PAYMENTS

YEAR	AGE	MONTHLY	YEARLY	CUMULATIVE
1	38	\$1,188.55	\$14,262.60	\$14,262.60
2	39	\$1,212.32	\$14,547.84	\$28,810.44
3	40	\$1,236.57	\$14,838.84	\$43,649.28
4	41	\$1,261.30	\$15,135.60	\$58,784.88
5	42	\$1,286.52	\$15,438.24	\$74,223.12
6	43	\$1,312.26	\$15,747.12	\$89,970.24
7	44	\$1,338.50	\$16,062.00	\$106,032.24
8	45	\$1,365.27	\$16,383.24	\$122,415.48
9	46	\$1,392.58	\$16,710.96	\$139,126.44
10	47	\$1,420.43	\$17,045.16	\$156,171.60
11	48	\$1,448.84	\$17,386.08	\$173,557.68
12	49	\$1,477.81	\$17,733.72	\$191,291.40
13	50	\$1,507.37	\$18,088.44	\$209,379.84
14	51	\$1,537.52	\$18,450.24	\$227,830.08
15	52	\$1,568.27	\$18,819.24	\$246,649.32
16	53	\$1,599.63	\$19,195.56	\$265,844.88
17	54	\$1,631.62	\$19,579.44	\$285,424.32
18	55	\$1,664.26	\$19,971.12	\$305,395.44
19	56	\$1,697.54	\$20,370.48	\$325,765.92
20	57	\$1,731.49	\$20,777.88	\$346,543.80



Henderson Structured Settlements LP

Since 1981

TAX-FREE PAYMENTS

YEAR	AGE	MONTHLY	YEARLY	CUMULATIVE
21	58	\$1,766.12	\$21,193.44	\$367,737.24
22	59	\$1,801.45	\$21,617.40	\$389,354.64
23	60	\$1,837.47	\$22,049.64	\$411,404.28
24	61	\$1,874.22	\$22,490.64	\$433,894.92
25	62	\$1,911.71	\$22,940.52	\$456,835.44
26	63	\$1,949.94	\$23,399.28	\$480,234.72
27	64	\$1,988.94	\$23,867.28	\$504,102.00
28	65	\$2,028.72	\$24,344.64	\$528,446.64
29	66	\$2,069.29	\$24,831.48	\$553,278.12
30	67	\$2,110.68	\$25,328.16	\$578,606.28
GUARANTEE TO SECONDARY PAYEE (BENEFICIARY) ENDS				
31	68	\$2,152.89	\$25,834.68	\$604,440.96
32	69	\$2,195.95	\$26,351.40	\$630,792.36
33	70	\$2,239.87	\$26,878.44	\$657,670.80
34	71	\$2,284.67	\$27,416.04	\$685,086.84
35	72	\$2,330.36	\$27,964.32	\$713,051.16
36	73	\$2,376.97	\$28,523.64	\$741,574.80
37	74	\$2,424.51	\$29,094.12	\$770,668.92
38	75	\$2,473.00	\$29,676.00	\$800,344.92
39	76	\$2,522.46	\$30,269.52	\$830,614.44
40	77	\$2,572.91	\$30,874.92	\$861,489.36
41	78	\$2,624.37	\$31,492.44	\$892,981.80
42	79	\$2,676.85	\$32,122.20	\$925,104.00
43	80	\$2,730.39	\$32,764.68	\$957,868.68
44	81	\$2,785.00	\$33,420.00	\$991,288.68
45	82	\$2,840.70	\$34,088.40	\$1,025,377.08
46	83	\$2,897.51	\$34,770.12	\$1,060,147.20
47	84	\$2,955.46	\$35,465.52	\$1,095,612.72
48	85	\$3,014.57	\$36,174.84	\$1,131,787.56
49	86	\$3,074.86	\$36,898.32	\$1,168,685.88
50	87	\$3,136.36	\$37,636.32	\$1,206,322.20



TAX-FREE PAYMENTS

YEAR	AGE	MONTHLY	YEARLY	CUMULATIVE
51	88	\$3,199.09	\$38,389.08	\$1,244,711.28
52	89	\$3,263.07	\$39,156.84	\$1,283,868.12
53	90	\$3,328.33	\$39,939.96	\$1,323,808.08
54	91	\$3,394.90	\$40,738.80	\$1,364,546.88
55	92	\$3,462.79	\$41,553.48	\$1,406,100.36
56	93	\$3,532.05	\$42,384.60	\$1,448,484.96
57	94	\$3,602.69	\$43,232.28	\$1,491,717.24
58	95	\$3,674.75	\$44,097.00	\$1,535,814.24
59	96	\$3,748.24	\$44,978.88	\$1,580,793.12
60	97	\$3,823.21	\$45,878.52	\$1,626,671.64
61	98	\$3,899.67	\$46,796.04	\$1,673,467.68
62	99	\$3,977.66	\$47,731.92	\$1,721,199.60
63	100	\$4,057.22	\$48,686.64	\$1,769,886.24
64	101	\$4,138.36	\$49,660.32	\$1,819,546.56
65	102	\$4,221.13	\$50,653.56	\$1,870,200.12

AND FOR LIFETIME THEREAFTER - INDEXED AT 2.0%

E. & O.E.

PAYMENT(S) TAX-FREE PURSUANT TO IT365R2 AS ISSUED BY CANADA REVENUE AGENCY.



Henderson Structured Settlements LP

Since 1981

FINAL STRUCTURED SETTLEMENT PAYMENT SCHEDULE
CAPITAL COST - \$ 500,000.00

CLAIMANT: CHARLES BROWN
 BIRTHDATE: DECEMBER 8, 1975

COMMENCING: NOVEMBER 1, 2014
 MONTHLY INCOME: \$1,374.81
 INDEX RATE: 0.0% - LEVEL PAYMENTS
 TERM: FOR 30 YEARS
 FULLY GUARANTEED TO SECONDARY PAYEE (BENEFICIARY)

LIFE COMPANY: BMO LIFE ASSURANCE COMPANY

8/Sep/14

TAX-FREE PAYMENTS

YEAR	AGE	MONTHLY	YEARLY	CUMULATIVE
1	38	\$1,374.81	\$16,497.72	\$16,497.72
2	39	\$1,374.81	\$16,497.72	\$32,995.44
3	40	\$1,374.81	\$16,497.72	\$49,493.16
4	41	\$1,374.81	\$16,497.72	\$65,990.88
5	42	\$1,374.81	\$16,497.72	\$82,488.60
6	43	\$1,374.81	\$16,497.72	\$98,986.32
7	44	\$1,374.81	\$16,497.72	\$115,484.04
8	45	\$1,374.81	\$16,497.72	\$131,981.76
9	46	\$1,374.81	\$16,497.72	\$148,479.48
10	47	\$1,374.81	\$16,497.72	\$164,977.20
11	48	\$1,374.81	\$16,497.72	\$181,474.92
12	49	\$1,374.81	\$16,497.72	\$197,972.64
13	50	\$1,374.81	\$16,497.72	\$214,470.36
14	51	\$1,374.81	\$16,497.72	\$230,968.08
15	52	\$1,374.81	\$16,497.72	\$247,465.80
16	53	\$1,374.81	\$16,497.72	\$263,963.52
17	54	\$1,374.81	\$16,497.72	\$280,461.24
18	55	\$1,374.81	\$16,497.72	\$296,958.96
19	56	\$1,374.81	\$16,497.72	\$313,456.68
20	57	\$1,374.81	\$16,497.72	\$329,954.40



Henderson Structured Settlements LP

Since 1981

TAX-FREE PAYMENTS

YEAR	AGE	MONTHLY	YEARLY	CUMULATIVE
21	58	\$1,374.81	\$16,497.72	\$346,452.12
22	59	\$1,374.81	\$16,497.72	\$362,949.84
23	60	\$1,374.81	\$16,497.72	\$379,447.56
24	61	\$1,374.81	\$16,497.72	\$395,945.28
25	62	\$1,374.81	\$16,497.72	\$412,443.00
26	63	\$1,374.81	\$16,497.72	\$428,940.72
27	64	\$1,374.81	\$16,497.72	\$445,438.44
28	65	\$1,374.81	\$16,497.72	\$461,936.16
29	66	\$1,374.81	\$16,497.72	\$478,433.88
30	67	\$1,374.81	\$16,497.72	\$494,931.60
NOVEMBER 1, 2044 - LUMP SUM PAYMENT			\$500,000.00	\$994,931.60

PAYMENTS TERMINATE

E. & O.E.

PAYMENT(S) TAX-FREE PURSUANT TO IT365R2 AS ISSUED BY CANADA REVENUE AGENCY.



Henderson Structured Settlements LP.

Since 1981